

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called TERRY HOPKINS as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF TERRY HOPKINS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Terry Hopkins.

10 Q Will you spell the first and last name for the
11 Reporter, please?

12 A T-E-R-R-Y; H-O-P-K-I-N-S.

13 Q Are you employed at this time, sir?

14 A Yes.

15 Q Will you tell the Court and jury what you do?

16 A I am a -- lay carpet.

17 Q How long have you done that for?

18 A About three weeks.

19 Q Do you have a criminal record, sir?

20 A Yes, I do.

21 Q Will you tell the Court and jury what it is, please?

22 A Attempted aggravated burglary, attempted felonious
23 assault.

24 Q You served any time for that?

25 A Yes, I did.

EXHIBIT

tabbles
20

1 Q Do you know the Defendant in this case who is seated
2 immediately below my right hand? (Indicating)

3 A Yes, I do.

4 Q How is it that you know him, sir?

5 A Through his son.

6 Q What is his name?

7 A Raymond.

8 Q Do you know the last name?

9 A Smith.

10 Q What is his son's name that you know?

11 A Danny.

12 Q How is it that you know Danny Smith?

13 A Went to school with him, used to see him out.

14 Q Do you have any other relationship with him?

15 A He became a friend after awhile, but that is how I
16 knew him, from school and stuff. We was friends.

17 Q So you have known Danny for how long then?

18 A Five or six years probably.

19 Q Did you know a person by the name of Ron Lally?

20 A No, I didn't.

21 Q Now, do you remember a night in January of '94 where
22 you were downtown Elyria at some bars with the Defendant
23 and some other people?

24 A Yes.

25 Q Do you recall what the date was?

*got info from
also when someone
the info*

1 A No, I don't.

2 Q So it was in January?

3 A Yes.

4 Q Can you tell the Court and jury of what year?

5 A Ninety-four. I think it was '94.

6 Q And will you describe the events of that evening
7 that pertain to the Defendant and his son, Danny?

8 A We went out one night and we were all out about
9 drinking --

10 Q Who would "we" be?

11 A Me, Danny, Tammy, my sister Sharon, I think it was
12 just us.

13 Q Was anybody there with Danny?

14 A Yes, Tammy.

15 Q And did you have a girlfriend there?

16 A Yeah.

17 Q And her name was?

18 A Misty.

19 Q And your sister?

20 A Sharon.

21 Q Was there?

22 A Right.

23 Q What bar were you drinking at?

24 A Razzle's, a lot of them, but mostly at Razzle's.

25 Q Do you know a person by the name of Stan Jalowiec?

1 A Yes.

2 Q How do you know him?

3 A Through Danny.

4 Q Did you see Stanley that night?

5 A No.

6 Q After you were drinking, what, if anything, did you
7 do and with whom?

8 A After that we went to Mom's Open Kitchen, ate
9 breakfast, me, Tammy, Danny, my sister and Misty and
10 from there --

11 Q Did the Defendant go?

12 A No, he didn't.

13 Q Then what happened?

14 A We went home -- I went to my sister's apartment and
15 then from there I went to Danny's because at the time I
16 was staying at Danny's apartment.

17 Q What time would this be?

18 A It was pretty late or early, whatever you want to call
19 that, about, I would say about three in the morning, 3:30
20 in the morning.

21 Q Danny was there?

22 A Yes.

23 Q Would you describe his condition, how he appeared, to
24 the Court and jury?

25 MR. BRUNER:

Objection.

165

1 THE COURT: Did you observe him?

2 THE WITNESS: Yes, I did.

3 THE COURT: Overruled.

4 A He was nervous, bothered. I asked him what was wrong
5 with him.

6 Q Did he reply?

7 A Yeah.

8 Q What did Danny say?

9 MR. BRUNER: Objection.

10 THE COURT: At this point who
11 was present, who was there?

12 THE WITNESS: Me and Danny.

13 THE COURT: Just the two of you
14 alone?

15 THE WITNESS: Right.

16 THE COURT: Sustained.

17 MR. ROSENBAUM: Could we approach,
18 please?

19 THE COURT: It is the same

20 request again as before.

21 Correct, Mr. Rosenbaum, setting up the same
22 scenario.

23 MR. ROSENBAUM: I am setting up a
24 hearsay exception, absolutely different.

25 THE COURT: Yes, approach.

1 please.

2 (Whereupon, the following proceedings
3 occurred at the bench out of the hearing of the jury.)

4 MR. ROSENBAUM: The exception I
5 would tender to the Court is that this is a
6 statement against penal interest.

7 MR. BRUNER: As to my client?

8 MR. ROSENBAUM: That would be --
9 well, it would be 803.1 and I believe 804.3
10 applies, but I would have to bring Danny in to
11 plead the Fifth first for that and I suppose
12 remotely 802 would apply also; 803.3 explains
13 why he feels how he does.

14 THE COURT: Harvey?

15 MR. BRUNER: Your Honor, may I
16 say that there comes a point in time when things
17 have to relate to Ray Smith.

18 MR. ROSENBAUM: This is absolutely
19 going to relate to him.

20 MR. BRUNER: I know what you did
21 with regard to the previous witness. At this
22 point in time Ray is not present. He doesn't
23 know where he is. Danny is making a statement.
24 It does not relate to Ray Smith.

25 All prejudicial to allow this hearsay

1 statement.

2 MR. ROSENBAUM: The statement does
3 relate to Ray. He is going to say they did it.

4 MR. BRUNER: Then you are
5 interpreting Danny's statement to Ray and it
6 becomes his trial, not Ray's.

7 MR. ROSENBAUM: He said it didn't
8 relate to his testimony, it does.

9 MR. BRUNER: Your Honor, if you
10 are taking Danny's admission and prejudicing the
11 jury with regard to that statement, I think there
12 comes a time when hearsay is out when it doesn't
13 relate to my client.

14 THE COURT: Give me a chance to
15 look at this and I will make a ruling in a second.

16 The objection is overruled.

17 (Whereupon, the following proceedings
18 occurred back in the hearing of the jury.)

19 THE COURT: You will have your
20 exceptions, Mr. Bruner.

21 Mr. Rosenbaum, you may continue.

22 BY MR. ROSENBAUM:

23 Q So you were inquiring of Danny why he was in what
24 condition?

25 A What was wrong with him, why was he -- he said he

1 was sick.

2 Q What did he say?

3 A He said that they did it, meaning they killed --

4 MR. BRUNER: Objection, your
5 Honor, and ask that that be stricken and the
6 jury be instructed to disregard that.

7 Q Did you inquire what he meant by that?

8 MR. BRUNER: Your Honor, I
9 would ask that the jury be instructed on that.

10 THE COURT: At this point,
11 ladies and gentlemen, you will disregard
12 anything other than what the statement was,
13 "They did it."

14 Q Did you ask him what he meant by that?

15 A Yeah.

16 Q And what was his response?

17 MR. BRUNER: Objection.

18 THE COURT: Overruled.

19 A He just kind of looked at me like, you know --

20 Q Now, had Danny ever had any previous discussions
21 with you about doing what they did?

22 A Yes.

23 Q Will you detail them for the Court and jury, please?

24 First of all, tell us when these discussions took
25 place as best you can recall.

1 A Well, it was awhile ago at a bar I seen him.

2 Q Was it before this night you are talking about?

3 A Yeah, it was before this.

4 Q How much before, if you can say?

5 A A few months. I told him if he needed something
6 taken care of to let me know, if he had to beat somebody
7 up, you know.

8 Q Why did you say that?

9 A He was having some trouble collecting some money or
10 something and I was just bragging and talking.

11 Q So you offered your services to him to beat someone
12 up?

13 A Yeah, if he needed me to collect the money is what I
14 said and anyway, he come to me later, after that, and he
15 asked if I would take care of this thing for him, this
16 problem.

17 Q What does that mean?

18 A Killing somebody.

19 MR. BRUNER:

Objection, your

20 Honor.

21 THE COURT:

Well, wait a

22 minute at this stage.

23 That objection is sustained.

24 Let's build a little more background.

25 Q Tell me what exactly did Danny say to you when he came

1 to you?

2 MR. BRUNER:

Objection.

3 THE COURT:

Overruled.

4 MR. BRUNER:

5 is no time frame or nothing.

6 THE COURT: Okay. I was under

7 the impression that it was several months before
8 the incident at the bar, correct?

9 THE WITNESS:

Yes.

10 Q And what exactly did Danny say, as best you can recall
11 it?

12 A Just what I said.

13 Q And what was that?

14 A To kill somebody.

15 Q And what was your response?

16 A I didn't want no part of nothing like that.

17 Q Did Danny ask anything else of you on that subject?

18 A No. After that he pretty much left it alone.

19 Q Did he ever inquire if you wouldn't do it, if you

20 had any other information that might help him?

21 A Yes.

22 Q What was that?

23 A If I knew anybody else to do it.

24 Q After that night when Danny said to you, "They did
25 it," you knew what happened?

1 A I grabbed my chest and I left.

2 Q And where did you go?

3 A I went to my sister's apartment.

4 Q Did you ever return back to Danny's apartment then?

5 A Yes.

6 Q When?

7 A The next morning.

8 Q And what transpired then, who was there?

9 A Michael, Raymond, Stanley and Danny.

10 Q And did they have any conversation in your presence
11 about what they had done the night before?

12 A Yes.

13 Q What did they say?

14 MR. BRUNER:

Objection as to

15 "they."

16 Who is "they"?

17 Q Who specifically was in this conversation?

18 Let me ask you this.

19 What did Stanley say, if anything, about the night
20 before?

21 A That they had killed the guy.

22 Q Did they say how?

23 A Yeah.

24 Q What did they say?

25 A They said that they --

1 MR. BRUNER:

Objection.

2 THE COURT:

Again, "they,"

3 who is "they"?

4 You are talking to Stanley?

5 Q Who was in this conversation?

6 Is this between you and one person?

7 A We were all in the same room.

8 Q Who was all of you people?

9 A Stan, Raymond, Danny, me, Tammy was in the back
10 bedroom.

11 Q Describe the conversation as to who said what as
12 best you can?

13 A Stan said that they had done it. See, I can't
14 remember who said what exactly. I am going with the
15 whole conversation that went on between us.

16 I can't say specifically who said what.

may not have been Stan

17 Q What happened?

18 A They said that they had shot the victim and they
19 had run him over with a car and stepped on him and
20 stabbed him with something or something like that.

21 Q In what tone were they relating this?

22 A Like they were bragging about it.

23 Q Did they say anyone else was there, or who did
24 they indicate was there --

25 MR. BRUNER:

Objection.

1 Q (Continuing) -- when this was done?

2 MR. BRUNER: Objection.

3 Q Did they indicate whether anybody else was there?

4 Yes or no.

5 A No.

6 Q They did say something about Mike?

7 A Yes.

8 Q What did they say about Mike?

9 A They said he was --

10 MR. BRUNER: Objection.

11 Who is "they"?

12 Five people we are talking about.

13 THE COURT: Under the
14 circumstances I think they are relating back
15 the same incident and the same people that
16 were there were Danny, Raymond, Stan and your
17 sister and yourself, the five of you; is that
18 correct?

19 THE WITNESS: At the time of
20 the incident when it happened?

21 THE COURT: No. This
22 conversation -- was your sister there?

23 THE WITNESS: No.

24 THE COURT: I thought she was
25 in the back?

174

1 THE WITNESS:
2 that is Danny's girlfriend.

No, I said Tammy,

3 THE COURT:

All right. Proceed.

4 Q What in this same conversation did they indicate about
5 Mike?

6 A That he was panicking.

7 Q Did they say where he was at the time that this guy
8 died?

9 MR. BRUNER:

Objection.

10 A I think they said he was in the car.

11 Q And that he was panicking?

12 A Uh-huh.

13 Q Did Danny ever admit to you that he discussed with
14 other people trying to get them to do this for him?

15 MR. BRUNER:

Objection.

16 THE COURT:

You can answer

17 that yes or no.

18 A Yes.

19 Q Would you tell what Danny said to the Court and jury,
20 please?

21 MR. BRUNER:

Objection.

22 THE COURT:

Overruled.

23 A As far as what, you mean --

24 Q Who did he speak to and did he offer anything to
25 accomplish this goal?

175

1 A He offered to pay for somebody, to buy somebody a car
2 if they would do it. He asked me if I knew somebody and
3 he said he offered to buy this person a car because he
4 knew that I knew he wanted a car.

5 Q Was there a specific person in mind here?

6 A Yes.

7 Q Who was that?

8 A Carl Hartman.

9 Q Was there a specific car in mind?

10 A Yes.

11 Q What was it?

12 A Red BMW.

13 Q So, Danny told you he would buy Carl a red BMW if he
14 killed this person?

15 A Yes.

16 Q Did you know who this person was?

17 A Yes, I know him.

18 Q Who was the person?

19 A He was a close friend.

20 Q I am talking about Carl Hartman?

21 A Yes.

22 Q Now, when you say that Danny wanted you to kill
23 someone, did he ever tell you who he wanted killed?

24 A No.

25 Q Did you know what this person had done that he wanted

1 killed?

2 A Yes.

3 Q What was that?

4 MR. BRUNER: Objection.

5 THE COURT: How do you know?

6 THE WITNESS: He told me.

7 MR. BRUNER: Objection.

8 THE COURT: Under those

9 circumstances, it will be sustained.

10 MR. ROSENBAUM: Could we approach?

11 THE COURT: All right, come on

12 up.

13 (Whereupon, the following proceedings
14 occurred at the bench out of the hearing of the jury.)

15 MR. ROSENBAUM: It would be the
16 State's position that these are not hearsay
17 because these statements are made in furtherance
18 of the conspiracy and under 801(D)(2) he lists
19 attempts to get people to carry out the
20 conspiracy and they are not hearsay. *not
admitted*

21 MR. BRUNER: Your Honor, again
22 this is Raymond's trial, not Danny's trial.
23 This is Danny's trial so far.

24 I think he should have tried him first.
25 At any rate, with all due respect, I think there

177

1 comes a time when hearsay has to be kept out.

2 THE COURT: At this point we
3 have gone as far as we can go.

4 MR. ROSENBAUM: This is different.
5 Danny's efforts for him to recite people are not
6 hearsay. Statements made by members of the
7 conspiracy, are not hearsay. He keeps saying
8 this is hearsay. This is not hearsay by
9 definition.

10 THE COURT: All right. Go
11 ahead, Harvey.

12 MR. BRUNER: Your Honor, it is
13 an out-of-court statement that he is trying to
14 show the truth.

15 MR. ROSENBAUM: It is not hearsay
16 by definition; 801(D)(2)(e).

17 THE COURT: A statement by a
18 co-conspirator of a party during the course and
19 in furtherance of the conspiracy upon independent
20 proof of the conspiracy.

21 MR. ROSENBAUM: I think we
22 established the conspiracy.

23 MR. BRUNER: I understand proof.

24 MR. ROSENBAUM: State versus Martin
25 says --

178

1 MR. BRUNER: He has shown proof
2 of Danny's conspiracy.

3 THE COURT: The Court will
4 retract that and overrule the objection.

5 (Whereupon, the following proceedings
6 occurred back in the hearing of the jury.)

7 Q My question was, did Danny ever tell you why he was
8 trying to get this person killed?

9 A Yes.

10 Q And why was that, sir?

11 MR. BRUNER: Objection again.

12 THE COURT: Overruled.

13 You may answer.

14 A He said because he had informed the police of his
15 doings.

16 Q Now, do you know a person by the name of Queen Bee?

17 A Yes.

18 Q And do you know her real name?

19 A That is all I know her by.

20 Q Does she have a car?

21 A Yes.

22 Q What kind of car?

23 A Blue LeBaron convertible.

24 Q Did you ever see anyone in that car on the night that
25 Danny was upset and made the admission to you?

1 A Yes, I did.

2 Q Was it before the admission?

3 A Yes.

4 Q Who was in possession of the car that you saw?

5 A Raymond, Stan and Mike.

6 MR. ROSENBAUM: I have no other
7 questions, your Honor.

8 THE COURT: Do we have a
9 statement?

10 MR. BRUNER: Yes, that is the
11 first thing I am going to ask for, your Honor.

12 THE COURT: I figured you
13 would.

14 Ladies and gentlemen, as the statement is
15 rather lengthy, the Court has to review it at
16 this point. Rather than keep you sitting here,
17 I will return you to the jury room and as soon
18 as the Court is finished doing what it has to
19 do, you will again be brought back in.

20 The admonitions that I have given you
21 regarding discussing this case amongst yourselves
22 or letting anyone discuss it with you still hold
23 at this point and as soon as Ms. Skinner gets
24 into the room I will return you to the jury room.
25 (Whereupon, the jury was excused for a short

1 recess.)

2 (Whereupon, the following proceedings
3 occurred in the Judge's chambers with the Defendant
4 and counsel present.)

5 THE COURT: Gentlemen, I have
6 read through the statements. I have read the
7 first statement that took place on January 4th,
8 '95, even more thoroughly than I did the other
9 two.

10 There are some inconsistencies. They all
11 end up in the same position that was testified
12 to. The other statements had a lot more
13 information than what was testified to at
14 this point and Mr. Bruner, there you are.

15 MR. BRUNER: Thank you, your
16 Honor.

17 THE COURT: The
18 inconsistencies that I see do not seem to be
19 totally and completely significant. It might
20 be identification of people who may have been
21 there, this type of thing, so take your time
22 and look at it.

23 (Whereupon, Mr. Bruner examined the
24 statement of Terry Hopkins.)

25 THE COURT: How about as far

181

1 as the inconsistencies are concerned, Mr. Bruner?

2 MR. BRUNER:

3 Yes, your Honor.

4 The statement has many additional statements
5 than to what Mr. Hopkins testified, but the main
6 inconsistency, Mr. Hopkins testified that he saw
7 Ray, Mike and Stanley Jalowiec in that LeBaron
8 that evening.

9 In his statement he says on page 18, on his
10 initial statement, or I am sorry, the last
11 statement, the one on January 6th I believe it
12 is, he didn't see Ray in the car, his sister did.

13 He was across the street. He didn't see
14 anyone in the car and what he knows about it, he
15 knows from his sister Sharon.

16 In addition to that, in another phone
17 conversation on page 7, I think of his first or
18 second phone conversation, he indicates Sharon
19 says who was in the car, not him.

20 That is a clear inconsistency to his
21 testimony.

22 In addition to that he testified under oath
23 that Carl Hartman was offered a red BMW by Danny.
24 In the statement, on page 9, the question by
25 Detective Leiby was, "Didn't Danny offer him a
red BMW?"

1 And to that statement he said, "I don't know
2 what he offered him."

3 That is a clear inconsistency.

4 As to everything else, there is a bunch of
5 additional questions that I will get into, but
6 specifically, as to the statement, that is what
7 I want to ask him about.

8 THE COURT:

Mr. Rosenbaum?

9 MR. ROSENBAUM:

Just those two

10 things. The one is inconsistent. It would
11 depend on the timing of the other, but I concede
12 he should be permitted to ask, but I assume we
13 are not going to have, like we have tried to
14 do before, create inconsistencies?

15 THE COURT:

16 I don't think we
17 will at this point.

18 MR. BRUNER:

19 No, I would like
20 to show him that statement as to his statement
as to his sister's view of the car anyway.

21 THE COURT:

22 And again, when
23 you get to that question I think, Mr. Leiby, if
24 you can look up that area or whatever it is.

25 MR. BRUNER:

Page 18 and 9 of
one of the phone conversations and also to the
red BMW, that is page 9. Page 18 is as to his

1 sister and then page --

2 THE COURT: That appears twice?

3 MR. BRUNER: Page 7 on one of
4 the phone conversations.

5 THE COURT: Okay.

6 Ready to bring them back in?

7 MR. BRUNER: Yes.

8 (Whereupon, the jury was returned to the
9 courtroom and the following proceedings occurred.)

10 THE COURT: Ladies and
11 gentlemen, the Court will report to you that the
12 necessary housework that had to be done has been
13 done and we are now ready to proceed with the
14 cross-examination of this witness, Mr. Bruner,
15 at this point.

16 Deputy, the rule is still to be enforced.

17 THE DEPUTY: Yes, your Honor.

18 MR. BRUNER: Thank you, your
19 Honor.

20

21

22

23

CROSS-EXAMINATION OF TERRY HOPKINS

24

BY MR. BRUNER:

25

Q Mr. Hopkins, you are a convicted felon, correct?

1 A Yes.

2 Q And I think you are convicted of ~~aggravated~~ --
3 attempted ~~aggravated~~ burglary?

4 A Yes.

5 Q And attempted felonious ~~assault~~?

6 A Yes.

7 Q That was for beating up your girlfriend, right?

8 A No.

9 Q Okay. How long were you in prison as a result of
10 that?

11 A Nine months.

12 Q What was your original sentence?

13 A Five to fifteen years.

14 Q Five to fifteen years and you were in prison nine
15 months?

16 A Yes, sir.

17 Q How did you get out of prison?

18 A Shock probation.

19 Q Did Detective Leiby of the Elyria Police Department
20 talk to Judge Glavas about your cooperation here to get
21 out?

22 A Yes.

23 Q So you got out on shock probation after nine months
24 as a result of your testimony in this case, correct?

25 A Yes.

1 Q Until you were approached as far as you knew you were
2 going to do five to fifteen years in prison, correct?

3 A Yes.

4 Q By the way, when were you eligible for parole when you
5 initially went?

6 A July of '98.

7 Q When did you get out of prison?

8 A Two months ago, September 23rd.

9 Q September of '95?

10 A Yes, sir.

11 Q Three years earlier, right?

12 A Uh-huh.

13 Q It is important for you to get out of prison, wasn't
14 it?

15 A Yep.

16 Q Now, on the night that you talked about here, you
17 went to Raffle's, correct?

18 A Razzle's.

19 Q I am sorry, Razzle's, Raffle's is in Cleveland.

20 You went there to drink, correct?

21 A Yes.

22 Q And you were drinking with who?

23 A Danny, Sharon, Misty, myself and Tammy.

24 Q Danny, Sharon, Misty, yourself and Tammy?

25 A Yes.

1 Q That is it?

2 A Yes.

3 Q No one else was there?

4 A No. I mean there was other people there, not just
5 us.

6 Q What time did you get there?

7 A About 8:30, nine o'clock I would guess.

8 Q What time did you leave the bar?

9 A We closed it.

10 Q You closed it.

11 I don't presume you were sitting there talking, you
12 were drinking?

13 A We left at 2:30 in the morning.

14 Q You were drinking, right?

15 A Yes.

16 Q What do you drink, Mr. Hopkins?

17 A Beer.

18 Q Only beer?

19 A Liquor, too.

20 Q Liquor, too?

21 A Uh-huh.

22 Q What were you drinking that night?

23 A Beer and liquor.

24 Q Beer and liquor?

25 A Yes, sir.

1 Q Okay. From 8:30 to ten o'clock, how many beers did
2 you have?

3 A I don't remember.

4 Q Three, four?

5 A I don't remember.

6 Q How many did you have by two o'clock that night, five,
7 six, ten?

8 A Quite a few.

9 Q Quite a few, right?

10 A Yes.

11 Q That can mean a lot of things to a lot of people,
12 right?

13 Quite a few can be to you ten, to me four?

14 A Yes.

15 Q How many is quite a few?

16 A More than ten.

17 Q More than ten. Okay. So you had more than ten beers.
18 How many glasses of liquor did you have?

19 What kind of liquor do you drink?

20 A Any kind. I don't remember how many.

21 Q You don't remember how many?

22 A No.

23 Q Do you drink Scotch?

24 A No.

25 Q Do you drink bourbon?

1 A Whatever.

2 Q Whiskey?

3 A Whatever.

4 Q Okay. So you don't remember whatever you were drinking
5 that night, is that right?

6 A No, that was two years ago.

7 Q Okay. But it would be fair to say, Mr. Hopkins, that
8 you had a number of drinks, too, liquor I am talking about?

9 A No.

10 Q You didn't?

11 You testified initially you had beer and liquor.

12 A But not a substantial amount.

13 Q Not a substantial amount?

14 A I had a couple maybe.

15 Q Maybe four?

16 A No, a couple.

17 Q A couple, that is two, three?

18 A About two, probably as far as I could remember. That
19 was a long time ago, like I said.

20 Q It is hard to remember what day of the week you were
21 drinking, right?

22 A Yeah.

23 Q So you left this bar and you closed it at about 2:30
24 at night, right?

25 A Yes.

1 Q Are you driving?

2 A No.

3 Q You are not driving?

4 A No.

5 Q Who is driving?

6 A My girlfriend.

7 Q So you are with the same people you testified to?

8 A No, after the bar we went to Mom's Open Kitchen and
9 ate breakfast.

10 Q Were you with the same people when you left from
11 Razzle's and went to Mom's?

12 A Yes.

13 Q Did you drive from Razzle's to Mom's?

14 A No, it is across the street.

15 Q You walked?

16 A Yes.

17 Q Who did you walk with?

18 A Danny, Tammy, Misty and Sharon.

19 Q Was it cold outside?

20 A Yes.

21 Q How cold was it?

22 A I don't remember.

23 Q You don't remember how cold it was?

24 A No, but it was cold.

25 Q Very cold or kind of cold?

1 A It was cold.

2 Q And you walked there and you are sure that you went
3 there with Sharon, is that correct?

4 A Yes.

5 Q And you were sitting there with Sharon, is that
6 right, at Mom's?

7 A Yes.

8 Q Who were you sitting with at Mom's?

9 A You just said Sharon.

10 Q You were with a number of people, who else?

11 A Stan -- not Stan, Danny, Tammy, Misty and me and
12 my sister.

13 Q Not Pops, Ray Smith?

14 A No.

15 Q And he wasn't at Razzle's?

16 A I didn't see him.

17 Q You didn't see him in or at Mom's, correct?

18 A No, I didn't.

19 Q Sharon wasn't sitting alone at a table by herself,
20 right?

21 A No.

22 Q She wouldn't do that?

23 A No.

24 Q Okay. And you were not discussing during that night
25 up until that time a guy by the name of Ron Lally with

1 Danny at that time, correct?

2 A I never knew who Ron Lally was.

3 Q Danny didn't appear to be nervous, excited?

4 He was drinking and laughing and eating and having a
5 good time with the rest of you?

6 A He wasn't eating.

7 Q Was he drinking?

8 A Yeah.

9 Q By the way, in addition to the drinking, did you have
10 anything else?

11 Did you have any marijuana?

12 A No.

13 Q You partook in marijuana, correct, at that time?

14 A I said no.

15 Q That night you did not?

16 A No.

17 Q How about cocaine?

18 A No, I did not.

19 Q You didn't have any cocaine?

20 A No.

21 Q How about your sister?

22 A No.

23 Q Or anybody in your party?

24 A No.

25 Q So up until that time, at what time did you go

1 to Mom's, three o'clock in the morning maybe?

2 A About 25 to three, the bar closed and we went.

3 Q The bar closes at 2:30, right?

4 A Yes.

5 Q So, at 2:30 you walk over to Mom's, you are there
6 about 20 to three, so far you have not seen Ray Smith,
7 correct?

8 A I had seen Ray Smith earlier in the car with Stan
9 and Mike.

10 Q You saw Ray Smith earlier parked in a car with Stan
11 and Mike?

12 A Right.

13 Q Was there a fourth person in the car?

14 A I didn't see a fourth person, no.

15 Q Where was that car?

16 A In the alley between Mom's and I think it is a music
17 store or something over there.

18 Q When would you have seen it earlier?

19 A You can look out the window of Razzle's. You can see
20 it right out of the window.

21 MR. BRUNER: Let me have the
22 statement for a moment.

23 Can I have the statement, your Honor?

24 THE COURT: Yes.

25 MR. BRUNER: Thank you.

1 Q Now, there came a time before you testified here
2 today -- do you need water or something like that?

3 A No, I am okay.

4 Q There came a time when you made a statement to
5 Detective Leiby about this case, right?

6 Do you remember that?

7 A Yes.

8 Q Do you remember giving him a statement about what
9 you saw that night?

10 A Yes.

11 Q Okay. And you told him the truth then, is that
12 correct?

13 A Yes.

14 Q You are telling these ladies and gentlemen --

15 A I talked to Detective Leiby two times. At one time
16 I did not know anything.

17 Q Would that statement have taken place on, I believe,
18 January 6th -- sometime in January, '95, is that correct?

19 A Yes.

20 Q You went to the police station?

21 A Yes.

22 Q You made a taped statement?

23 A Yes.

24 Q And you were telling him the truth about everything
25 then, right?

1 A From what I remembered.

2 Q From what you remembered?

3 A Yeah.

4 Q Do you remember telling Detective Leiby -- he asked
5 you, "You were able to see Raymond Smith in the car and
6 Stan Jalowiec," and your answer was, "I am not able, my
7 sister --

8 And he said, "Oh, your sister Sharon," and your
9 answer was, "I was across the street outside of Razzle's."

10 He said, "Okay, your sister Sharon was there and able
11 to see who was in the car," and your answer was, "Right"?

12 You didn't see who was in the car, did you?

13 A I did.

14 Q But you forgot to tell him that, is that right?

15 A I don't know.

16 Q Do you remember having a phone call with Detective
17 Leiby about the same thing?

18 A Yes.

19 Q I think that is page 7.

20 You had that phone call with him at about the same
21 time in January of '95, right?

22 A I don't know.

23 Q It is December of '95 now?

24 A Yes.

25 Q You testified, or you told Detective Leiby when she

1 pulled the car up that is when it was, when she pulled
2 the car up, I think that is when she seen them, because
3 I specifically had asked her who was in the car.

4 I said, "Well, who was that, Stan and them," and
5 she said, "Yeah, Stan and Pops and his brother, because
6 I guess his brother was trying to talk to my sister, or
7 whatever."

8 Do you remember saying that?

9 A Yes.

10 Q You didn't tell him at that point you had seen who
11 was in the car, you told him your sister seen it, correct?

12 A Yes.

13 Q Now you are saying something different to the ladies
14 and gentlemen of the jury?

15 A I seen Stan in the car and I asked her who else was
16 in the car.

17 Q You seen Stan in the car and asked her who else was
18 in the car?

19 A Yes, and when she told me --

20 Q She told you and that is what you are telling the
21 ladies and gentlemen of the jury, what she told you?

22 A Yes.

23 Q Okay. That is not what you observed, it is what
24 she observed, correct?

25 A Yes.

1 Q So you didn't see somebody in the car, it was her
2 and you got that from her and that is what you told the
3 police?

4 A I did see somebody in the car.

5 Q How far from that car were you?

6 A About 20 yards, 25 yards.

7 Q Did you see Stan driving?

8 A Yeah, he was driving.

9 Q Who was in the back?

10 A Mike was in the back.

11 Q And is there a large street light over the car, did
12 it illuminate the interior of the car?

13 A No.

14 Q Who was in the front?

15 A Raymond was in the front.

16 Q Raymond and as far as you know, no one is in the back?

17 A I seen three people in the car. I seen Stan for sure
18 and my sister told me that Raymond and Mike were in the car
19 and Mike is a big guy.

20 I seen Mike in the back.

21 Q Let's get this straight. You saw Stan in a car.

22 Is that what your testimony is now?

23 A Yes.

24 Q You didn't see Raymond, your sister told you Raymond
25 was there, right?

1 A Yes.

2 Q Of course, your view of all this took place after you
3 had all your drinks at Razzle's?

4 A Yes, it did.

5 Q And you were crystal clear about everything that was
6 going on, right?

7 A No, not exactly.

8 Q You were kind of messed up, right?

9 A Yeah.

10 Q Now, your testimony is that you went -- then went to
11 Mom's Kitchen, right?

12 A Yes.

13 Q No discussion about anything happening to Ron Lally,
14 right?

15 A No.

16 Q As a matter of fact, I think your testimony was like
17 three or four months before Danny had asked you to beat
18 him up, right?

19 A No.

20 Q Because you are good at that thing, beating people up?

21 A No.

22 Q Well, excuse me. You went to prison for attempted
23 felonious assault.

24 That is trying to hurt somebody, right?

25 A Uh-huh.

1 Q Who was that somebody that you attempted to hurt?

2 A Jason Justin.

3 Q Excuse me?

4 A Jason Justin.

5 Q What did you do to him?

6 MR. ROSENBAUM: Objection.

7 THE COURT: Sustained.

8 Q He asked you to beat somebody up, you didn't know
9 who that somebody was, right?

10 A No, he didn't.

11 Q Danny?

12 A He didn't ask me to beat nobody up.

13 Q He requested that you beat somebody up?

14 A No, he didn't.

15 Q He talked about beating somebody up?

16 A No, he didn't.

17 Q Okay. I thought you said you were kind of drunk
18 and you kind of volunteered to help him?

19 A That was another time, that was before then.

20 Q That is what I am talking about. I am talking
21 about three or four months before.

22 A I didn't know what you were talking about.

23 Q Forgive me, it is my fault. Let's talk about three
24 or four months before.

25 You said that he requested that you beat somebody up?

1 A He said he was having trouble collecting some money
2 and I told him if he needed help collecting money, that
3 I would do it, help him.

4 Q Help him?

5 A Yes.

6 Q And you knew that that meant to beat somebody up?

7 A I guess.

8 Q Ray never asked you to beat anybody up?

9 A No.

10 Q He never asked you to kill anybody?

11 A No, he didn't.

12 Q He never asked you to take a witness out for him,
13 did he?

14 A No.

15 Q You never had any conversation or discussion with
16 Ray about any of that, did you?

17 A No.

18 Q Now, at that point -- let's go back to that night.
19 You go to Mom's, right?

20 A Yes.

21 Q And your testimony is that you are sitting with
22 your sister Sharon and your girlfriend?

23 A And Danny and Tammy.

24 Q And Danny and Tammy, right?

25 A Yes.

1 Q And you leave there, right?

2 A Yes.

3 Q And how do you get out of there, what car do you
4 drive?

5 A I don't drive. My girlfriend gives me a ride.

6 Q So she drove you out of there?

7 A Yeah.

8 Q Had she been drinking?

9 A Yes.

10 Q How about your sister, where does she go?

11 A She left with Danny and Tammy.

12 Q She left with Danny and Tammy?

13 A Yes.

14 Q She didn't leave with Ray and Michael?

15 A No.

16 Q They didn't get in a car with her, right?

17 A No.

18 Q Now, at some point in time you see Danny?

19 There was a conversation with you that evening,
20 right?

21 A What?

22 Q That evening, later on, you went and where did you
23 go, to the Knight's Inn?

24 A No, I went home. We thought we went to the Knight's
25 Inn. After I thought about it, I didn't go to the

1 Knight's Inn.

2 Q You told the police that you went to the Knight's Inn?

3 A I also told him that that wasn't right, that I don't
4 remember later.

5 Q At one point you told him that you went to the Knight's
6 Inn, correct?

7 MR. ROSENBAUM: Your Honor, this is
8 what we discussed, I think.

9 MR. BRUNER: I will withdraw
10 that.

11 Q Did you go to the Knight's Inn?

12 A No.

13 Q Okay. Did you ever tell anyone you went to the
14 Knight's Inn?

15 A Yes.

16 Q Who did you tell?

17 A Detective Leiby.

18 Q And when did you do that?

19 A When he interviewed me.

20 Q Okay. That was in January of '95, right?

21 MR. ROSENBAUM: Your Honor, can
22 we approach?

23 THE COURT: Yes.

24 (Whereupon, the following proceedings
25 occurred at the bench out of the hearing of the jury.)

1 MR. ROSENBAUM: He is now using
2 the statement to correct inconsistencies and
3 even though he said he would not, he went
4 ahead and did it anyway.

5 THE COURT: At this point
6 continue, but be careful.

7 MR. BRUNER: I understand.

8 MR. ROSENBAUM: Why should he
9 be permitted to continue?

10 You are using the statement to create
11 one inconsistency.

12 THE COURT: I am going to
13 overrule the objection, but, Mr. Bruner, be
14 careful.

15 MR. BRUNER: I understand,
16 your Honor.

17 THE COURT: Okay.

18 (Whereupon, the following proceedings
19 occurred back in the hearing of the jury.)

20 Q Your testimony here is that you did not go to the
21 Knight's Inn?

22 A Correct.

23 Q Is your memory better today than it was in January?

24 A What is that supposed to mean?

25 Q I asked you a question.

1 Is your memory better today?

2 THE COURT:

3 Well, Mr. Bruner,
4 I think the question -- I think you ought to say,
5 "Is your memory about the incident better today?"

6 Q I am sorry. I will say it that way.

7 Is your memory about the incident better today than it
8 was that day?

9 A No, it is not.

10 Q Okay. Now, your testimony today is, where did you go
11 with your girlfriend?

12 A To my sister's apartment.

13 Q I think your testimony previously was you went -- at
14 some point you talked to Danny that night?

15 A Yes, I did.

16 Q And all the time he was with you when you were
17 drinking at Razzle's, you went to Mom's, he was not
18 excited or nervous or anything like that, correct,
19 isn't that correct?

20 A I really don't remember.

21 Q Okay. And then you saw him what time?

22 A About 3:30, maybe four, in the morning I seen him.

23 Q Three, 3:30, four in the morning?

24 Let's figure this out.

25 You get to Mom's about 25 to three, right?

A Yes.

1 Q How long of a time did you spend at Mom's?

2 A I don't know, about half hour, 45 minutes.

3 Q Okay. And then you go to your sister's apartment?

4 A Yes.

5 Q By the way, where was your sister when you go to her
6 apartment?

7 A She was with Danny and Stan, I mean Danny and Tammy.

8 Q Who was at your sister's apartment?

9 A Nobody.

10 Q Does she have a child?

11 A Yes.

12 Q Where was her child?

13 A With my mother.

14 Q You get to the apartment, no one is there, you don't
15 go to sleep at 3:30 in the morning?

16 A No, I don't live there.

17 Q You don't live there?

18 A No.

19 Q What did you go there for?

20 A I waited for Danny to come home.

21 Q Danny was living there?

22 A No, I stayed at Danny's apartment for about a month.

23 Q Didn't you have a key to Danny's?

24 A No.

25 Q To just go in?

1 A No.

2 Q So you then went to Danny's apartment about what time?

3 A Three, 3:30, four o'clock, something like that.

4 Q At that point in time you have a conversation with
5 Danny?

6 A Yeah, when I went back to go home.

7 Q You said he was nervous?

8 A Right. On the way up the steps to the apartment.

9 Q He looked sick?

10 A Yes.

11 Q He didn't look sick at any time before?

12 A No.

13 Q Ray wasn't there, right?

14 A No.

15 Q You didn't have any discussion with Ray Smith at
16 that point, correct?

17 A No.

18 Q And Danny is the one that said, "They did it,"
19 right?

20 A Yes.

21 Q They is what he said?

22 A Yes.

23 Q But you didn't see -- I think if I got this correct
24 -- you didn't even see Ray at any time that night?

25 A Yes.

1 Q Is that right?

2 A Yes.

3 Q Up until that point?

4 A I didn't even see him that night.

5 Q Okay. Now, that is what, 3:30, four o'clock in the
6 morning that you hear this from Danny?

7 A Yes.

8 Q How did you get from your sister's apartment to
9 Danny's?

10 A They only live right across the street.

11 Q Walked across?

12 A No, drove.

13 Q Drove across, you did?

14 A Me and my girlfriend.

15 Q And how much time did you spend at Danny's?

16 Were you staying there that night?

17 A I was going to stay there that night. After I
18 found out what happened, I left and went back to my
19 sister's.

20 Q After he stated, "They did it," you left?

21 A Yes.

22 Q And you went to your sister's?

23 A Yes.

24 Q Did you go to sleep?

25 A Yes.

1 Q How long did you sleep?

2 A I don't know. I have no idea.

3 Q What time did you get up?

4 A I don't know.

5 Q You don't know?

6 A I don't remember.

7 Q At some point in time you said you were back at
8 Danny's and you saw Stan?

9 A Yes.

10 Q What time was that?

11 A I don't remember what time it was.

12 Q Was it the next day?

13 A Yes.

14 Q Was it in the afternoon?

15 A I don't remember.

16 Q You don't remember?

17 You remember everything else exactly, but you
18 don't remember?

19 A I can't remember what time.

20 Q Was it in the morning?

21 A I just said I don't remember.

22 Q Was it at noon?

23 A I don't remember.

24 Q Was it at three in the afternoon?

25 A I don't remember.

1 Q What were you doing the next morning?

2 A The next morning?

3 Q Do you remember?

4 A I don't remember.

5 Q Or that night?

6 A That night, what night?

7 Q The night that you saw Stan, the next day, what
8 were you doing that night?

9 A I don't remember.

10 Q And you saw Stan there, correct?

11 A At the apartment.

12 Q Whatever time it was?

13 A You said I saw Stan there.

14 Q At Danny's apartment?

15 A Yes.

16 Q The next day?

17 A Yes.

18 Q Whatever time it was?

19 A It was the next day.

20 Q And who was there?

21 You testified Stan was there?

22 A Raymond, Stan, Mike, Tammy and myself.

23 Q Raymond, Stan, Mike, Tammy and yourself?

24 A Right.

25 Q Your sister Sharon wasn't there?

1 A No.

2 Q Danny's girlfriend Tammy was there?

3 A Yes.

4 Q And I think you testified that Stan was talking to
5 you, correct?

6 A They were all talking to me.

7 MR. BRUNER: Well, let's
8 approach for a moment, your Honor, if we can.

9 (Whereupon, the following proceedings
10 occurred at the bench out of the hearing of the jury.)

11 MR. BRUNER: I have to look
12 throughout my notes, but in the statement he
13 says Stan is the one doing the talking.

14 THE COURT: There might be --

15 MR. BRUNER: Stan is the one
16 admitting, so I would like to think Stan is the
17 one doing the talking.

18 THE COURT: I think there might
19 be a inconsistency.

20 MR. ROSENBAUM: What page is that?

21 MR. BRUNER: Page 4, page 5 --
22 page 4 is the phone call, too.

23 Your Honor, I am going to withdraw that.

24 THE COURT: Very well.

25 (Whereupon, the following proceedings

1 occurred back in the hearing of the jury.)

2 BY MR. BRUNER:

3 Q I think in your direct testimony that you said Stan
4 was doing the most of the talking, right?

5 He is the one that you remember talking, isn't that
6 correct?

7 A No.

8 Q You just said this morning that he did the talking and
9 you couldn't remember, but you remembered Stan specifically,
10 right?

11 A I said they were talking about it. They were all
12 talking about it to me.

13 Q All talking about it?

14 A Yes.

15 Q Okay.

16 Q Stan was talking about it specifically, wasn't he, to
17 you?

18 A Yes, talking about what he had done.

19 Q Stan was talking about what he had done?

20 A Yes.

21 Q Stan said that he had the gun, correct?

22 A Yes.

23 Q And Stan said he pulled the trigger, correct?

24 A I don't remember.

25 Q But you know that Stan had the gun, right?

1 A Right, because he had it days before that, the gun
2 itself. I mean possession of the gun.

3 Q He had possession of the gun days before that?

4 A Right.

5 Q Ray didn't?

6 A Yes, he didn't.

7 Q He did not, correct?

8 A Yes, you are right.

9 Q Thank you. And Ray, before that meeting that you
10 had with Stan, where Stan said he had the gun that night,
11 Ray had no discussion about this, right?

12 None before that date?

13 MR. ROSENBAUM: I object to that
14 question. It is not his testimony.

15 THE COURT: Sustained.

16 Ask it in a different manner.

17 Q Prior to your going over to Danny's apartment that
18 day, the next day after you went to sleep at your
19 sister's --

20 A Yes --

21 Q (Continuing) -- you had no discussions with Raymond
22 about the request that Danny made to you, right?

23 A No.

24 THE COURT: No, you did not,
25 or no, that is not so?

THE WITNESS: Me and Raymond

didn't talk about Danny's request.

Q And you didn't discuss anything with Danny about Raymond, correct?

A As far as what?

Q What his requests were to you?

A No.

Q Is that correct?

A Correct.

Q Thank you. I think at one point you also testified that Danny promised a BMW to Carl Hartman, correct?

A Correct.

Q He is a buddy of yours?

A Yes.

Q And I think your testimony under oath this morning was that he was promised a BMW by Danny because he needed a car?

A Yes.

Q And you remember talking about that with Detective Leiby when you gave your statement in January of '95?

A Yes.

Q And Detective Leiby asked you, "Danny actually offered to buy Carl a red BMW in trade for working with him," that is what the Detective said?

A Yes.

1 Q And your answer was, "I don't know what he offered
2 him, but Carl told me he didn't want no part of it
3 either"?

4 A Yes.

5 Q So you don't know what Carl was offered at all,
6 correct?

7 A I do know.

8 Q From Detective Leiby?

9 A I was acting like I didn't know nothing. I didn't
10 want to involve him. I was asked not to involve him.

11 Q Ray didn't offer Carl Hartman anything?

12 A No, he didn't.

13 Q He didn't offer you anything?

14 A No, he didn't.

15 Q As far as you know, he didn't have any discussions
16 with anyone about that, right?

17 A As far as I know.

18 Q And for your testimony here today, you saved yourself
19 three years in prison, correct?

20 A Yes.

21 MR. BRUNER: I have nothing
22 further.
23
24
25

REDIRECT EXAMINATION OF TERRY HOPKINS

BY MR. ROSENBAUM:

Q Sir, what day did you go to prison?

A January 23rd.

Q Of what year, '95?

A Right.

Q And what day did you give the statement to Leiby?

A I don't remember.

Q Was it long before you went to prison?

A No, it wasn't.

Q Well, it was before you went to prison?

A Yes, it was.

Q Did Mr. Leiby promise you then that he would get you out of prison early?

A At that time?

Q Yes.

A No.

Q So you gave the statement without that promise?

A Yes.

Q Before you even got sent to prison?

A Right.

Q Now, was Danny Smith drinking with you at the bar?

A Yes, but not as much as everybody else was.

Q Okay. Now, do you know who had the gun?

Let me ask you this.

1 The Defendant was, even though he didn't solicit you
2 to kill anyone before, was participating or talking in the
3 conversation the next day about doing the deed, right?

4 MR. BRUNER: Objection.

5 A Yes.

6 THE COURT: Overruled.

7 It is leading, Mr. Rosenbaum. If you would
8 stop at this point.

9 Q Now, who was participating in this conversation about
10 this bragging?

11 A Stan and Raymond.

12 Q And --

13 A And Mike and Danny and all of them right there in the
14 living room.

15 Q And did the Defendant say any of that was not true in
16 your presence?

17 A No.

18 MR. ROSENBAUM: I have no other
19 questions.

20 THE COURT: Mr. Bruner?

21

22

23 RECROSS-EXAMINATION OF TERRY HOPKINS

24 BY MR. BRUNER:

25 Q Detective Leiby, after you made the statement and

1 when you agreed to testify here, got you out of prison,
2 isn't that right?

3 A Yes.

4 Q Just that simple, correct?

5 A I suppose.

6 Q Okay. So you had a tremendous incentive to sit
7 here, correct, three years of your life?

8 A Yes.

9 MR. BRUNER: I have nothing
10 further.

11 MR. ROSENBAUM: I have no other
12 questions.

13 THE COURT: Thank you, sir,
14 you may step down.

15 (Witness excused.)

16 * * *

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1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called JOANN FIKE as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF JOANN FIKE

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Joann Fike.

10 Q Spell the name for the Reporter?

11 A J-O-A-N-N; C-O-R-R-I-N-E; F-I-K-E.

12 Q How old are you, Ma'am?

13 A Thirty-six.

14 Q Are you employed anywhere?

15 A No.

16 Q How do you exist?

17 A I receive social security. I am a widow.

18 Q Do you know the Defendant in this case who is seated
19 immediately under my right hand? (Indicating)

20 A I do.

21 Q What is his name?

22 A Raymond Smith.

23 Q How is it that you know him, Ma'am?

24 A Through his son.

25 Q And what is his son's name?